

2010 OE#3 NEGOTIATIONS
CITY'S INITIAL LIST OF NEGOTIATION INTERESTS & ISSUES

The City wishes to raise the following issues to the extent that they are mandatory subjects of bargaining:

PERIOD OF MEMORANDUM OF AGREEMENT

1. Term of contract

PAY

2. Reductions in pay (base pay and premium pays)
3. Callback Pay Changes
4. Standby Pay Changes

HEALTH INSURANCE

5. Modifications to cost sharing formula
6. Modifications to HMO Plan Design
7. Elimination of dual coverage
8. Modifications to Health-in-Lieu

HOURS OF WORK AND OVERTIME

9. Calculation of overtime
10. Eligibility for overtime
11. Double backs changes

LEAVES OF ABSENCE

12. Clarification of language

AGENCY FEE

13. Language clean-up/clarification

VACATION

14. Clarification/clean up of language

SICK LEAVE

15. Sick leave payout changes
16. Medical verification clarification

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RETIREE PENSION BENEFITS

17. Changes to retiree pension benefits, including, but not limited to:

- Calculation of Final Average Salary
- Cost of Living Adjustment (COLA)
- Supplemental Retiree Benefit Reserve (SRBR)
- Payment of unfunded pension liability
- Retirement service credit calculation
- Modification to pension formula
- Cost Sharing of Pension Benefits

Some of the subjects above may be applicable to new hires only

RETIREE HEALTHCARE BENEFITS

18. Retiree healthcare benefits, including benefits for new hires

SALARY STEP STRUCTURE

19. Revise step structure and modify movement within steps

20. Freezing step structure

PERFORMANCE EVALUATIONS

21. Changes to language on performance evaluations

DISABILITY LEAVE SUPPLEMENT

22. Changes to Disability Leave Supplement

23. Changes to ineligibility if offer and decline of modified duty

RETIREMENT CLARIFICATION

24. Remove maximum on administrative costs

SUBSTANCE ABUSE POLICY

25. Incorporation into the City Policy Manual

HOUSEKEEPING

- Updating dates and outdated language/terms
- Incorporating existing language into the new contract

CITY PROPOSAL #3- CALL BACK PAY

Proposed Language

5.9 Call Back Pay. Any employee who is called back to work after working their scheduled shift and departing from their place of employment shall be credited with overtime for the time worked, or for ~~three-two~~ (32) hours at the appropriate rate, whichever is greater. An employee called back to duty shall be entitled to the ~~threetwo~~-hour minimum call back compensation only once per eight-hour shift. For subsequent call backs during the same shift, the employee shall be credited with the time worked or for one-half hour at the appropriate rate, whichever is greater.

5.9.1 If an employee completes a 40-hour workweek, the appropriate rate for call back pay is 1.5. If the employee does not complete a 40-hour workweek, the appropriate rate is 1.0. ~~All paid absences shall be deemed time worked for purposes of determining if the employee completed his/her 40-hour workweek.~~ Only actual time worked shall be used to determine if the employee completed his/her 40 hour workweek.

CITY PROPOSAL #4- STAND BY PAY

Proposed Language

5.10 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate for each eight hour shift they perform standby duty. In the event that the employee is called back to work, they shall only be entitled to the compensation provided by Section 5.9 above, ~~in addition to the one hour of standby compensation for that eight-hour shift.~~

5.10.1 If an employee completes a 40-hour workweek, the appropriate rate for standby pay is 1.5. If the employee does not complete a 40-hour workweek, the appropriate rate is 1.0. Only actual time worked shall be used to determine if the employee completed his/her 40 hour workweek.

CITY PROPOSAL #5- HEALTH INSURANCE COST SHARING FORMULA

Proposed Language

5.5 Health Insurance.

5.5.1 Effective the beginning of pay period fifteen of payroll calendar year 2009, the City shall pay ninety (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

5.5.2 Effective June 27, 2010, the City shall pay eighty (80%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay twenty percent (20%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

CITY PROPOSAL #6- HEALTH INSURANCE PLAN DESIGN

Proposed Language

5.5 Health Insurance.

5.5.2 Effective July 1, 2009, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$10
- b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 for non-formulary drug co-pay.)
- c. Emergency Room Co-pay shall be increased to \$50

5.5.3 Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$25
- b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name.
- c. Emergency Room Co-pay shall be increased to \$100
- d. Inpatient/Outpatient procedure copay shall be increased to \$100

CITY PROPOSAL #7- HEALTH INSURANCE DUAL COVERAGE

Proposed Language

5.5 Health Insurance.

5.5.5 An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

5.6 Dental Insurance

5.6.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

CITY PROPOSAL #8- MODIFICATIONS TO HEALTH IN LIEU

Proposed Language

5.7 Payment-in-lieu of Health and/or Dental Insurance Program. The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

5.7.1 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive ~~50% of the City's contribution toward the employee's health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution~~the following per payperiod:-

	Health In-Lieu	Dental In-Lieu
If eligible for family coverage:	\$150.00	\$10.00
If NOT eligible for family coverage:	\$50.00	\$10.00

5.7.2 An employee who is already receiving other City provided medical benefits is not eligible for payment in-lieu.

5.7.23 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

5.7.34 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first 30 days of employment, during the annual open enrollment period or within 30 days of a qualifying event (defined in the Human Resources Benefits Handbook as a change in marital, dependent or work status of the employee or the employee's spouse) occurring anytime during the year. Employees who miss the 30-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

5.7.45 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced workweek, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

5.7.56 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

5.7.56.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee

contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.

- | 5.7.56.2 Dental Insurance. Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two (2) dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

CITY PROPOSAL #9- CALCULATION OF OVERTIME

Proposed Language

- 6.11 Only actual time worked shall be used in the calculation of overtime for the purposes of this Article. ~~Time spent on paid sick leave, disability leave, holiday leave, vacation leave, personal leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article, except for as provided in Article 6.6.1.~~

CITY PROPOSAL #10- ELIGIBILITY OF OVERTIME

Proposed Language

- 6.6 A full-time employee authorized or required to work overtime who works in excess of eight (8) hours per day or, ~~ten (10) hours per day if assigned to a schedule of ten (10) hours per day four (4) days per week, or twelve (12) hours per day if assigned to a 12-hour shift at the Water Pollution Control Plant or in excess of 40 hours per workweek~~ shall be compensated at the rate of 1.5 the employee's hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill the employee's workweek requirement.

CITY PROPOSAL #11- DOUBLE BACKS

Proposed Language

6.6.2 Double Backs. All double-backs (two non-consecutive shifts of at least eight (8) hours each within a 24-hour period) at the Water Pollution Control Plant will be compensated by a four-hour premium (recorded as 1.0 OOT). This provision applies only to employees who work in a twenty-four (24) hour operation at the Water Pollution Control Plant and excludes employees who voluntarily shift trade, but includes relief personnel and shift changes.

CITY PROPOSAL #12- LEAVES OF ABSENCE

Proposed Language

- 13.7 Voluntary Separation From Employment. Any employee who is absent without notification to the Department Director or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary separation from employment unless the failure to report, as determined by the City, is due to extenuating circumstances beyond the control of the employee. An employee will be considered to be absent without notification pursuant to this Section, if notification is not provided prior to the commencement of the second consecutive shift.
- 13.8 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined by the City to be the result of extenuating circumstances beyond their control shall be reinstated.

CITY PROPOSAL #13- AGENCY FEE

Proposed Language

ARTICLE 20 AGENCY FEE

20.1 Employee Rights.

20.1.1 The City and the Organization recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

20.1.2 Accordingly, membership in the Organization shall not be compulsory. An employee has the right to choose, either; to become a member of the Organization; or, to pay to the Organization a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 20.6 below.

20.2 Employee's Obligation to Exclusive Representation.

20.2.1 An employee who is a member of the organization on January 12, 1986, and any employee who becomes a member after January 12, 1986, shall maintain such membership, except as provided during the change of status period set forth in Section 20.2.3 below.

20.2.2 Any person who becomes an employee on or after January 12, 1986, must, within 30 days after their employment, submit to the City either:

20.2.2.1 A signed authorization to deduct dues as a member of the organization; or,

20.2.2.2 Voluntarily sign and deliver to the City a written assignment authorizing deduction of the properly established agency fee as defined in Section 20.3 below, subject to the conditions set forth elsewhere in the Memorandum for payroll deductions. Upon voluntary authorization duly completed and executed, the City will deduct from the pay of an employee and pay to the organization the normal and regular monthly Agency fee; or,

20.2.2.3 A signed affidavit that the employee qualifies for an exemption as set forth in Section 20.6.1 below. In this case the employee must designate a charity from Section 20.6.2 to which the appropriate amount will be paid through payroll deduction.

20.2.2.4 If a person fails to make any of the designations set forth above within the 30 day period, they will be given notice by the City that the Agency fee deduction will be made beginning with the first full pay period following the expiration of the 30 day period. The City and the organization agree that the agency shop fee shall be paid in exchange for representation services necessarily performed by the organization in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the organization.

20.2.3 During the periods of March 17, 2009[DATE] through April 17, 2009[DATE] any employee who is a member of the organization may, by written notice to the Municipal Employee Relations Officer or designee, resign such membership and change their status to the agency fee or exempt category in accordance with the provisions of this article.

20.2.4 Upon the return from leave of absence of any employee or upon the recalling of an employee from layoff status on or after January 12, 1986, the employee's options under this article will be determined by their original date of hire.

20.2.5 ~~The parties expressly agree that the authority granted the Employee Relations Officer or designee, in Article 10, Full Faith and Credit, to cancel payroll deductions in the event of a concerted activity extends to the cancellation of agency fee and dues deductions.~~

20.2.6 The organization specifically agrees that the provisions of Section 20.7 of this article apply to any claims against the City or any of its agents or employees regarding the payroll deduction of agency fee.

20.3 Definition of Agency Fee.

20.3.1 The agency fee collected from non-member bargaining unit employees pursuant to Section 20.2 of this Memorandum shall be limited to the Organization's (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer or designee, from time-to-time by the designated officer of the Organization as the agency fee.

20.3.2 The Organization certifies that this "representation fee" includes only those costs actually incurred by the Organization in representing employees, who are not also members of the Organization, in matters specifically and directly connected with the enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Organization further certifies that this "representation fee" excludes all other costs, fees, and adjustments including, but not limited to: Organization fines, back dues, initiation fees, or any other charge required as a condition of Organization membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities, any and all amounts which do not constitute costs actually incurred by the Organization in representation matters specifically and directly connected with the bargaining of, enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Organization specifically agrees that the provisions of Section 20.7 of this Article apply to any claims against the City or any of its agents or employees regarding the appropriateness of the amount of any "representation fee" set forth in this Section.

20.4 Exceptions. The provisions of this Article shall not apply to non-benefited part-time employees.

20.5 Annual Verification of Agency Fee by Organization. The Organization shall submit to the City a detailed written financial report of its financial transactions in the form of a balance sheet and an operating statement, certified as to accuracy by the Organization's Executive Secretary. Each year such reports shall be verified and submitted in writing to the Office of Employee Relations by the Organization within 60 days of July 1st.

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20.6 Employees Exempted From Obligation to Pay Organization.

20.6.1 Any employee shall be exempted from the requirements of Section 20.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.

20.6.2 Such exempt employee shall, as an alternative to payment of an agency fee to the Organization, pay an amount equivalent to such agency fee to either:

- a) The United Way;
- b) Combined Health Agencies Drive (C.H.A.D.);
- c) Any charity jointly agreed upon by the City and the Organization. Such charities cannot be affiliated in any manner with the Organization, nor can such charity be related to an established religious organization.

20.7 Hold Harmless. The Organization shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to agency fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.

20.8 Expiration Date of Agency Fee Provisions ~~Rescission of Agency Fee Provisions.~~ ~~It is agreed and understood by the parties to this Memorandum that the provisions, rights and obligations herein pertaining to payment of any agency fee and dues deduction shall not survive beyond the term of this Memorandum, and shall accordingly expire on April 14, 2006, provided however that, p~~Pursuant to Government Code Section 3502.5, this Article 20 may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Memorandum of Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least thirty (30) percent of the employees covered by this Article; (2) such vote shall be by secret ballot; and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.

CITY PROPOSAL #14- VACATION PAY

Proposed Language

ARTICLE 17 VACATIONS AND PERSONAL LEAVE

17.1 Each eligible full-time employee, who has been employed as such for at least 13 biweekly pay periods, shall be granted vacation leave with pay in accordance with the following:

17.1.1 Vacation Accrual. ~~An Employees~~ shall accrue a leave of absence with full pay for vacation leave at a rate specified below for each hour worked purposes, in the amount specified below for each cycle of 26 full biweekly pay periods December 31st, or portion thereof, in each year of employment as specified:-

<u>Years of Service</u>	<u>Hours of Vacation Per 26 Pay Period Cycles</u>
<u>First 5 years</u>	80 hours
<u>6th - 10th year</u>	120 hours
<u>11th - 12th year</u>	136 hours
<u>13th - 14th year</u>	152 hours
<u>15th year or more</u>	168 hours

17.1.2 Carry-Over of Vacation Leave. ~~An employee may carry over to the next subsequent cycle of 26 biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which the employee is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. Unless an excess carryover is approved, an employee carrying over greater than the maximum allowable vacation hours (200 hours) shall have the excess amount deducted from the following year's accrual. This carryover process shall expire at the end of 2007.~~

17.1.2 Vacation Accrual Limits.

~~Effective the first pay period of payroll calendar year 2008, e~~Employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount. It is the responsibility of the employee to track for compliance with this provision.

~~Effective the first pay period of payroll calendar year 2008, any employee who is already above two times their annual vacation accrual rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.~~

17.1.3 Payment for Unused Accrued Vacation Leave Upon Termination of Employment. If the employment by the City of any full-time employee should cease, the employee shall be given, after such termination, full pay for any vacation leave which may then have accrued.

17.2 Vacation Pay. ~~If, in the judgment of the City Manager or designee, it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, such work may be~~

~~authorized. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to the employee's regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, may elect, in writing, filed with the Director of Human Resources or designee, to carry over such leave to the subsequent cycle of 26 biweekly pay periods. This Section, Section 17.2, shall not be in effect after the first pay period of payroll calendar year 2008.~~

17.3 Vacation Leave. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a workweek, unless the employee elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the length of time served by each employee within the relevant classification, and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employees in such classification. Employees shall submit written requests for all vacation leave in advance and as early as practical. Written response to the leave request will be provided back to the employee within ten (10) working days of the receipt of the written request.

17.4 Computation of Vacation Leave.

17.4.1 ~~For purposes of this Article~~accruing vacation, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time off, or any other paid leave, shall be deemed to be "time worked."

17.4.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period the employee achieved permanent status. ~~An employee in an initial probationary status shall not be permitted to take a vacation during the first 13 pay periods of employment even though some employees may, upon satisfactory completion of the initial probationary period, be entitled to additional vacation pursuant to the above.~~

~~22.2.6 Carry over vacation shall be limited to 120 hours or the employee's maximum allowable accrual in the previous cycle, whichever is less. Effective the first pay period of payroll calendar year 2008, a~~All part-time employees' maximum vacation accrual amount shall be 120 hours. Any employee who is at the maximum vacation amount of 120 hours, shall cease from accruing vacation until such time when employee uses enough vacation so that they are below their maximum vacation amount of 120 hours.

~~22.2.7 Vacation leave may be taken only after completion of 1,040 hours of employment and in an amount equal to but not more than the amount of vacation accrued.~~

CITY PROPOSAL #15- SICK LEAVE PAYOFF

Proposed Language

18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement or death under one of the following conditions:

18.2.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15-20 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.

~~18.2.2 Separated Employee with Vesting Rights.~~ The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.

~~18.2.3 Death During Service.~~ The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least 15 years of service in any applicable retirement plan.

~~18.2.4 Death of Separated Employee.~~ The estate of any full-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.

18.3 Payout shall be determined as follows.

18.3.1 If a full-time employee at the time of retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death.

18.3.2 Less than 400-800 hours -	Hours accumulated x 50% of final hourly rate;
or 400 - 799 hours -	Hours accumulated x 60% of final hourly rate;
or 800 - 1200 hours -	Hours accumulated x 75% of final hourly rate.

18.4 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

18.5 Employees are only eligible for one sick leave payoff while employed by the City of San Jose, including breaks in employment.

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18.6 Employees hired by the City on or after July 1, 2010, shall not be eligible for a sick leave payoff benefit.

CITY PROPOSAL #16- MEDICAL VERIFICATION

Proposed Language

- 18.1.5 ~~An employee may be required to furnish medical verification or other substantiation for any absence for which sick leave payment is requested.~~ Any time an employee is required to report to work and is unable to report due to illness or injury, an employee may be required to furnish medical verification or other substantiation for any such absences.

CITY PROPOSAL #19 SALARY STEP STRUCTURE

Effective June 27, 2010, all employees represented by OE#3 will cease to receive automatic step increases and will receive step increases based on merit only and in conjunction with a performance appraisal submitted to Human Resources recommending a merit increase. In order to be eligible for a merit increase, employees must receive an overall performance rating of Above Standard. Increases may not be greater than 2.5% per year in the appropriate class salary range and may not exceed the top step of a classification's salary range.

Effective June 27, 2010, the salary steps for all classifications represented by OE#3 will change from approximately 5% in between each step to approximately 2.5%. As a result of this, the number of steps for all classifications represented by OE#3 will increase from 5 to 9.

This proposal is not intended to increase or decrease the maximum or minimum step of any classification represented by OE#3.

CITY PROPOSAL #20- FREEZING STEP STRUCTURE

Effective June 27, 2010, all OE#3 represented employees will have step and merit increases frozen for 26 payperiods. After 26 payperiods, employees represented by OE#3 will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible, based on performance.

CITY PROPOSAL #21- PERFORMANCE EVALUATIONS

Proposed Language

ARTICLE 27 PERFORMANCE EVALUATION

- 27.1 The purpose of performance evaluation is to have formal communication between supervisor and employee regarding job performance. It is a value to both parties to have this process be meaningful and fair.
- 27.2 In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions. Counseling should be separate from normal worksite dialogue and should occur as close in time to the event or problem as possible. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.
- 27.3 Documentation of oral counseling should be given to the employee at the time of the counseling and will not be placed in the employee's official department or City personnel file. This documentation will include specific suggestions for corrective action, if appropriate.
- 27.4 Key Element Review. If the employee formally receives an overall performance rating of meets standard, but receives a below meets standard in an individual key element rating, the employee may request a review of that individual key element by the Department Director, or designee. The employee must submit a written request to the Director, or designee, specifying the reasons for such request, within 30 calendar days from the date the employee received the final performance appraisal. The Director, or designee, shall ~~investigate the request, arrange a meeting with the employee and provide~~ a written response to the employee within 30 calendar days of receipt. The written response of the Director, or designee, shall be final.
- 27.5 Overall Rating Appeal. If the employee formally receives an overall performance rating that is below "meets standard," the employee may appeal the rating. Such appeal shall be made in writing to the Department Director, or designee within 30 calendar days from the date the employee received the final performance appraisal. The Director, or designee, shall ~~investigate the appeal, arrange a meeting with the employee and provide~~ a written response to the employee within 30 calendar days of receipt.

27.5.1 If the employee is dissatisfied with the decision of the Department Director or designee, the employee may, within ten (10) calendar days from the Director's, or designee's response, request a hearing with the City Manager or designee. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decisions previously rendered.

27.5.2 The City Manager or designee, shall hold a hearing within a reasonable time, and within ten (10) days of the hearing shall inform the employee of the decision. The decision of the City Manager or designee, shall be final. This will be the only appeal process applicable to review the performance appraisal. The employee shall have the right to Union representation at the hearing with the Department Director or designee, or the City Manager or designee.

CITY PROPOSAL #22- DISABILITY LEAVE SUPPLEMENT

Proposed Language

ARTICLE 19 DISABILITY LEAVE

- 19.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees sixty-six (66%) percent ~~85%~~ of their regular base salary.
- 19.2 Eligibility for Disability Leave Supplement. A full-time employee who is required to be absent from work due to a job-related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period. DLS will also be paid for intermittent absences for medical appointments and physical therapy pursuant to the resolution of grievance #624 (2/15/85).
- 19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one (1) year.
- 19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:
- 1) an act of gross negligence of such employee;
 - 2) any work voluntarily undertaken by employee from which the employee has been prohibited from engaging in as determined by a City physician, prior to the date of injury.
- 19.5 Ineligibility if Offer and Decline of Modified Duty. DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.
- 19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals sixty-six (66%) ~~85%~~ of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:
- 1) the time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period;
 - 2) the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
 - 3) Nine-Six (69) calendar months (274-183 days) or 4560-1040 hours, if not continually absent following date of injury.

- 19.6.1 Time Limit for DLS Eligibility. After ~~4560~~ 1040 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which the employee is claiming DLS.
- 19.6.2 Suspension of Disability Leave Supplement. The City may suspend Disability Leave Supplement in lieu of or as part of a disciplinary suspension, demotion or pay reduction. The City shall proceed with due process requirement, unless the employee is non-ambulatory and is determined by a physician to be medically unable to participate. An employee who is unable to participate may send a representative in their absence.
- 19.7 Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.
- 19.8 Requirement of Evidence Proving Temporary Disability. The Director of Human Resources or designee, is responsible for determining eligibility for DLS. In making this determination, the Director or designee, may require the employee to provide proof of injury or illness, proof that the injury or illness was job related, proof of the disability and how long the injury or illness will last, and proof of other relevant matters as determined by the Director or designee. The Director or designee, may require the employee to submit to a medical examination by a physician selected by the City.
- 19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this article and the integration of Sick Leave, accrued vacation, and compensatory time off with Workers' Compensation provided for in Article 18.1.2.3 may be considered to have voluntarily separated from employment.

CITY PROPOSAL #23- INELIGIBILITY IF OFFER AND DECLINE OF MODIFIED DUTY

Proposed Language

ARTICLE 19 DISABILITY LEAVE

- 19.5 Ineligibility if Offer and Decline of Modified Duty. ~~DLS shall not be provided if~~ the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified, the employee shall be considered to have voluntarily resigned from City service.

CITY PROPOSAL #24- RETIREMENT LANGUAGE CHANGES

Proposed Language

ARTICLE 26 RETIREMENT

26.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.

26.1.1 If an employee receives a service-connected disability retirement, pursuant to an application for such retirement made on or after July 13, 1986, the retirement benefit will be offset by subsequent workers' compensation payments except for survivorship benefits and permanent disability payments for retirees receiving a 100% permanent disability rating.

26.1.2 Administrative costs of the Federated Retirement System, including staff salaries and indirect labor costs, are to be paid from the retirement fund. ~~Costs to the fund for staff salaries and indirect labor costs shall not exceed 0.07% of assets in the fund per year.~~

CITY PROPOSAL #25- SUBSTANCE ABUSE PROGRAM

Remove Exhibit II

Proposed Language

ARTICLE 30 SUBSTANCE ABUSE TREATMENT PROGRAM

- 30.1 Full-time and permanent benefited part-time employees are eligible for substance abuse treatment benefits and are subject to the terms and conditions of the negotiated ~~OE#3 Substance Abuse Policy (Exhibit II)~~ City of San Jose Substance Abuse Program & Policy.